

Issa G. Abuaita (SBN 243175)  
IGA LAW  
110 West C St. Ste. 1300  
San Diego, CA 92101  
(619)696-1200 FAX: (619)696-1221

Attorney for Defendant-Lizbeth Moreno

FILED KD  
2009 FEB -6 AM 9:45  
CLERK  
U.S. BANKRUPTCY CT.  
SO. DIST. OF CALIF.

**UNITED STATE BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

In Re

LIZBETH MORENO,

Debtor.

EDUARDO GONZALEZ AND MONICA

GONZALEZ,

Plaintiffs,

v.

LIZBETH MORENO,

Defendant.

) Bankruptcy Case No.: 08-11204-LA7

) Adversary Proceeding No: 09-90009-LA

) **NOTICE OF MOTION AND MOTION TO  
DISMISS COMPLAINT AND MOTION  
FOR MORE DEFINITE STATEMENT**

) HEARING DATE: MARCH 19, 2009

) TIME: 2:30 PM

) DEPT: 2

) JUDGE: HON. LOUISE DECARL ADLER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on March 19, 2009 at 2:30pm, or as soon thereafter as the parties may be heard, Defendant LIZBETH MORENO will move this Court, at the United States Courthouse located at 325 West F St, San Diego, California 92101, in department 2, room 118, the

NOTICE OF MOTION AND MOTION TO DISMISS AND MOTION FOR MORE DEFINITE STATEMENT

1 Honorable Judge Louise Decarl Adler presiding, through her undersigned attorney, for dismissal  
2 of the Original Complaint of Plaintiffs EDUARDO GONZALES and MONICA GONZALES,  
3 for failure to state a claim against DEFENDANT on which relief can be granted, in that  
4 Allegations of fraud and mistake in a complaint must be stated with particularity. In this context,  
5 "particularity" means the plaintiff's allegations must be specific enough to give the defendant  
6 notice of the particular misconduct alleged to constitute the defense asserted so that the plaintiff  
7 can defend against the charge and not just deny that it has done anything wrong. As the  
8 Supporting Brief attached to this motion more fully explains, the Plaintiff in this case alleges that  
9 a fraud against the Plaintiff's occurred but did the describe the specific act which constitutes a  
10 Fraud. Therefore, Plaintiff's first claim for relief against the Defendant must be dismissed.

11  
12 In addition, the Defendant will move for a more definite statement as to all of claims for relief  
13 alleged in the complaint. Plaintiff makes many allegations against the defendant, but the  
14 complaint does not clearly identify the actual wrongful conduct of defendant. The vague wording  
15 of the complaint makes it excessively difficult for Defendant to formulate a proper defenses, and  
16 subjects Defendant to unnecessary discovery.

17  
18 This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of  
19 Points and Authorities, and the pleadings and papers on file in this action.

20  
21 **Therefore**, Defendant respectfully requests that the court:

- 22 1. Dismiss the Plaintiff's complaint;
- 23 2. Require Plaintiff's to amend their complaint to more specifically plead their alleged claims for  
24 relief.
- 25 3. Award Defendant costs of suit;

1 4. Award the Defendant reasonable attorney fees;

2 5. Award Defendant any other relief to which Defendant is entitled.

3  
4 Any opposition or other response to this motion must be served upon the undersigned and the  
5 original and one copy of such papers with proof of service must be filed with the Clerk of the  
6 U.S. Bankruptcy Court at 325 West "F" Street, San Diego, CA 92101-6991, NOT LATER  
7 THAN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE.

8  
9 Respectfully submitted this 6<sup>th</sup> day of, February 2009,

10  
11 

12 Issa G. Abuita  
13 Attorney for Defendant-  
14 Lizbeth Moreno  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25